

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

1003

In the Matter of Application 3850)
of the City of Los Angeles to)
Appropriate from Rock Creek in)
Mono County)

Decision D 1003

ADOPTED APR 10 '61

DECISION APPROVING APPLICATION

Application 3850 was filed by the City of Los Angeles on February 15, 1924. The application is for a permit to appropriate 50 cubic feet of water per second by direct diversion and 40,000 acre-feet per annum by storage, year-round, from Rock Creek, a tributary of the Owens River, in Mono County. The water would be diverted by gravity through a canal about $2\frac{1}{2}$ miles long to Lake Crowley and would be used for power purposes at three existing power plants of the applicant located along an eleven-mile length of the Owens River below Lake Crowley.

Protests having been filed, hearings were held in 1938 for the purpose of considering Application 3850 and other applications relating to the Owens River and the Owens River Project of the applicant. Decision D 455 of the State Engineer, predecessor of the Board, approving and denying other applications which had been heard, was issued April 11, 1940. With respect to Application 3850, the decision granted permission to change the proposed point of diversion downstream to a point near the

highway bridge at a resort called "Tom's Place". This action had been requested by the applicant to eliminate several protests by agricultural and domestic users above the bridge. The merits of the application were not determined, the decision stating that insufficient evidence had been introduced with respect to the quantity of water required for domestic and recreational purposes and for proper sustenance of fish life in Rock Creek below the proposed point of diversion. It was ordered that further action be withheld concerning Application 3850 until further order was entered.

Applicant did not request further action, and none was taken until after the Board succeeded to the jurisdiction of the State Engineer over water rights in 1956. Action was postponed by the Board for a time at applicant's request pending negotiations with the Department of Fish and Game concerning requirements for preservation of fish in the creek. No agreement having been reached, the Board held a preliminary hearing in Los Angeles on April 22, 1959, Board Member Ralph J. McGill presiding, and a hearing on the merits was held in Bishop on September 15, 1959, Chairman Kent Silverthorne presiding. The applicant and protestants of record were duly notified of the hearings. The applicant and numerous other parties appeared and submitted evidence. The principal issue was the bypass requirement to be imposed in the public interest for the preservation of fish, fishing, and recreation, as well as the protection of vested rights. On June 30, 1960, the Board adopted Decision D 975 approving the application subject to certain bypasses of water to be made by

the applicant down Rock Creek for the maintenance of fish life, based upon evidence submitted by the Department of Fish and Game (hereinafter referred to as the Department).

Following the decision a petition was filed by the applicant for reconsideration as authorized by Section 1357 of the Water Code. The Board, on August 25, 1960, ordered reconsideration of the decision and further hearing was held on December 20, 1960, by Chairman Silverthorne and Board Members W. P. Rowe and Ralph J. McGill for the limited purposes of (1) receiving into evidence an agreement between the applicant and the Department relating to bypass of water for fish and (2) hearing arguments against amending Decision D 975 to reflect the conditions of the agreement.

The evidence introduced at the hearings and arguments of counsel having been duly considered, the Board finds as follows:

1. There is unappropriated water in Rock Creek available to supply the applicant, and the intended use is beneficial.
2. About 14 or 15 miles of Rock Creek would be affected by the diversion of water under the subject application. This reach of Rock Creek extends from the proposed point of diversion near Tom's Place in Inyo National Forest at about elevation 7,000 feet down through Birchim Canyon to Pleasant Valley Reservoir at about elevation 4,500 feet where Rock Creek joins the Owens River. Most of this part of Rock Creek follows a main highway and is one of the most heavily fished streams in the western United States. The National Forest in this area contains cabins, camping areas,

and picnicking grounds, and farther downstream there are privately-owned properties using water for domestic, power and irrigation purposes.

3. The applicant and Department have reached an agreement which provides that the following minimum flows, or the natural flow of Rock Creek, whichever is less, be bypassed down the natural stream channel for maintenance of fish life: 15 cfs (cubic feet per second) from October through March, 20 cfs during April and September, 22 cfs during May and August, and 25 cfs during June and July.

This represents a reduction of 5 cfs during April and September and 3 cfs during May and August from the bypass requirements imposed in Decision D 975, or a total reduction from those bypass requirements of 2,912 acre-feet during the period 1948 to 1958, inclusive. During this same period, in the four months affected by the agreement, the total discharge past "Below Tom's Place" gaging station on Rock Creek amounted to 56,962 acre-feet. Under conditions of maximum reduction at any one time, the water remaining in Rock Creek would be decreased by 12 per cent during May and August and 20 per cent during April and September. However, the overall reduction is only 5.1 per cent of the total discharge. Recognizing that measurement of stream flow with an accuracy of 5 per cent is considered good, the small average difference which would result under the terms of the agreement is not susceptible to accurate measurement and would not adversely affect fish life or recreational values in the area.

4. Below the proposed point of diversion Rock Creek usually gains more water than it loses. On infrequent occasions Rock Creek is a losing stream at the same time that the flow at the proposed diversion point at Tom's Place is in excess of the bypasses provided for in the agreement. However, during these periods the flows passing the proposed point of diversion pursuant to the agreement would be adequate to supply the present domestic, irrigation, and power uses between Tom's Place and Birchim Canyon as well as to provide sufficient water for fish and recreational requirements.

5. In determining the public interest, the Board has given consideration to the economic benefit to the applicant of being able to use Rock Creek water for the generation of electricity through existing power plants with only minor additional capital expenditures. Consideration has also been given to the great importance of Rock Creek for fishing and other recreational purposes; to the economic importance of fishing and other recreation to the local area; to the year-round requirements of a sustained flow for the spawning of trout in fall, winter and spring months as well as for active fishing conditions in summer months; and to the fact that the applicant's construction of power plants on the nearby Owens River has eliminated fishing in that part of the local area. It is the judgment of the Board that in order to best develop, conserve and utilize in the public interest the water to be appropriated, applicant should be required to release the minimum flows provided in the aforesaid agreement between applicant and the Department.

From the foregoing findings, the Board concludes that Application 3850 should be approved and that a permit should be issued to the applicant subject to the terms and conditions set forth in the following Order. A petition to change points of re- diversion and places of use for power purposes will be required to conform the application to the location of the three power plants and their points of diversion as already constructed on the Owens River.

IT IS HEREBY ORDERED that Application 3850 be, and the same is, approved, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 50 cubic feet per second by direct diversion to be diverted from January 1 to December 31 of each year, and 40,000 acre-feet per annum by storage to be collected from January 1 to December 31 of each year.

2. Permittee shall continuously bypass not less than the following rates of flows, or the natural flow of Rock Creek, whichever is less, for the maintenance of fish life:

<u>Month</u>	<u>cfs</u>
January	15
February	15
March	15
April	20
May	22
June	25
July	25
August	22
September	20
October	15
November	15
December	15

3. In accordance with Section 5946 of the Fish and Game Code, this permit is conditioned upon full compliance with Section 5937 of said Code.

4. The maximum amount herein stated may be reduced in the license if investigation warrants.

5. Actual construction work shall begin on or before September 1, 1962, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

6. Said construction work shall be completed on or before December 1, 1964.

7. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

8. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

9. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State

Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

IT IS FURTHER ORDERED that Decision D 975 be, and the same is, vacated.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the day of , 1961.

Kent Silverthorne, Chairman

Ralph J. McGill, Member